IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 24289 of 2007(N)

I.A. NO. 4756/2007 IN O.S. NO. 9/2006 MUNSIFF COURT, ERNAKULAM.

PETITIONERS:

1. **V.K.THANKAMMA, W/O PADMANABHAN, PUTHIYEDATH HOUSE, PONNURUNNI DESOM, POONITHURA VILLAGE, KANAYANNOOR TALUK.**
2. **RATHI, D/O PADMANABHAN & THANKAMMA, -DO- -DO-**
3. **KUTTAN, S/O PADMANABHAN & THANKAMMA, -DO- -DO-**
4. **RAJAN, S/O NARAYANAN, HUSBAND OF RATHI, PUTHUKULANGARA HOUSE, THRIKKANARVATTOM DESOM, ERNAKULAM VILLAGE, KANAYANNOOR TALUK, NOW RESIDING AT PUTHUKULANGARA VEETTIL, PONNURUNNI RESEARCH ROAD.**

BY ADV. SRI.N.NEELAKANDHAN NAMBOODIRI, SRI.P.S.NARAYANA RAJA.

RESPONDENTS:

1. **KARTHIYANI, W/O P.K.DAMODARAN, PUTHIYEDATH HOUSE, MAMBRA ROAD, PONNURUNNI DESOM, POONITHURA VILLAGE, KANAYANNOOR TALUK, VYTTILA P.O., KOCHI-19.**
2. **P.D.SAJEEVAN, S/O DAMODARAN & KARTHIYAYANI, -DO- -DO-**

W.P.(C). NO.24289/2007:

3. P.D.SAROJINI, W/O SUDHAKARAN,
AREKKADY THUNDIYIL HOUSE, AASAN ROAD,
PONNURUNNI DESOM, VYTTILA P.O., KOCHI-19.

4. P.D.VALSALA, W/O SATHYAN,
PULLANTHARA THUNDIYIL HOUSE,
CHAMBAKKARA, POONITHURA P.O.,
THRIPUNITHURA, POONITHURA VILLAGE,
KANAYANNOOR TALUK.

5. SREEKANTH(MINOR), S/O LATE SREEKALA
BY HIS FATHER C.K.SOMAN, CHAKKALACKAL VEETTIL,
MANDIRAM ROAD, CROSS LANE-5, AYYAPPANKAVU,
KOCHI-18.

6. C.K.SOMAN, H/O LATE SREEKALA,
S/O KESAVAN, CHAKKALACKAL HOUSE,
MANDIRAM ROAD, CROSS LANE-5, AYYAPPANKAVU,
KOCHI-18.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 24289 OF 2007 N

Dated this the 9th August, 2007.

JUDGMENT

This writ petition is filed challenging the part refusal of an amendment prayed for by the plaintiff in the suit. In the amendment application it is stated that Padmanabhan had a daughter viz., Jalajamani and her rights had been given by virtue of two documents in the year 1976 and 1979 and subsequent to the same he had executed a will on 29.12.1986 whereby no right had been given to the said Jalajamani as stated in that paragraph. The court below disposed of the interim application and genuineness of the will is left open to be decided at the time of trial. Hence I.A. was allowed in part except para 2 of the application. Unless there is consideration of para 2 of the amendment application the question of considering the genuineness or otherwise of the will does not arise at all. Therefore, I hold that the court below has not applied its mind properly. If the genuineness of the will is left open to be considered at the stage of the trial, necessarily the court should have allowed the application including para 2. It is not seen done. Therefore, the order suffers from serious infirmity and therefore, it is set aside. The matter is remitted back to the court below for fresh

consideration of the said I.A after hearing all concerned. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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